

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13008 of Sylvia Kotz, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the off-street parking requirements (Sub-section 7202.1) and from the rear yard requirements (Sub-section 5303.1) for a proposed addition to a grocery store in a C-2-B District at the premises 1701 Corcoran Street, N.W., (Square 155, Lot 231).

HEARING DATE: September 4, 1979

DECISION DATES: November 7 and December 5, 1979

FINDINGS OF FACT:

1. The subject site is located at the northwest corner of the intersection of 17th and Corcoran Streets, N.W., and is known as 1701 Corcoran Street, N.W. It is in a C-2-B District.

2. The subject property contains approximately 13,728 square feet in area and is improved by a Safeway grocery store containing approximately 6900 square feet in sales area. Adjacent to the store is an open area of the lot containing approximately 6700 square feet and providing twenty-two accessory parking spaces.

3. Until March, 1979, the area of the parking lot was zoned R-5-B but parking was permitted pursuant to a special exception granted by this Board in Appeal No. 8176, Order dated July 14, 1965. To satisfy a condition of the Board's order, the owners of the property entered into a covenant with the District of Columbia which requires that the parking area be reserved for that purpose so long as the improvement exists or so long as said accessory off-street parking is required by the Zoning Regulations.

4. On March 8, 1979 the Zoning Commission granted the application of Sylvia Kotz and Safeway Stores, Inc. and rezoned the area of the parking lot from R-5-B to C-2-A. By Order dated June 14, 1979 the entire lot 231 including the existing building and the parking lot was rezoned to C-2-B.

5. Safeway Stores, Inc., hereinafter referred to as Safeway, the long-term lessee of the subject property, proposes to expand the existing store on the area of the parking lot to create a grocery store with approximately 13,000 square feet of sales area. No accessory parking spaces would be provided for the expanded Safeway store. The applicant proposes a one-

story addition to the existing store and relocation of the loading dock to the northeast side of the expanded building with an entrance on 17th Street. The plans provide that the front of the building for zoning purposes will be on Corcoran Street. The rear line of the building abuts the rear property line. Since the rear yard may be measured from the centerline of the alley, 7.5 feet of rear yard, or half the alley, is provided. A variance of 7.5 feet is required.

6. Safeway seeks a variance from the parking requirements, consent to the release of the covenant to provide parking and a variance from the rear yard requirements for a commercial structure.

7. In a C-2-B District, the construction of a retail grocery store is permitted as a matter-of-right and fifty-eight parking spaces are required by the Zoning Regulations for a retail commercial structure of the size proposed by the applicant.

8. The property is abutted to the east by 17th Street, to the south by Corcoran Street, to the north by a fifteen foot alley and to the west by townhouses on Corcoran Street. The property lies to the southeast and at the boundary of the Dupont Circle Historic District.

9. The area in which the store is located is primarily residential and has one of the highest population densities in the City. The area contains townhouses, apartment buildings, and a small retail commercial strip along 17th Street.

10. The lessee testified that the current Safeway store is a neighborhood store and is the primary retail grocery store for the surrounding residential community. The lessee further testified that the store was built in 1966 and is now too small to provide the necessary grocery service to the community. It stated that the aisles are congested and the store is unable to stock the quantity and variety of merchandise sought by neighborhood residents.

11. The lessee Safeway introduced into evidence two surveys of customers of the existing store taken July, 1978 and, a year later, on July, 1979. The results of both surveys are similar and the latest survey showed that sixty-two percent of the store customers live within a one-quarter mile radius of the store and ninety-six percent of these customers either walk or use modes of transportation other than automobile to get to the store.

12. Public transportation is easily accessible to the store. There are Metrobus routes in the vicinity and the store is only three blocks from the entrances to the Dupont Circle Metro station.

13. Safeway testified that the expansion of the store is not expected to change the market area for the store but will permit the store to stock more merchandise, alleviate shopper congestion within the store and generate employment opportunities. Safeway further testified that because of the enlargement of the stockroom and truck unloading area within the store, there will be fewer truck deliveries to the store.

14. Safeway testified that it explored the acquisition of other real property on which to enlarge its store but there were no unimproved lots within the market area of the current store that would be suitable for a Safeway store.

15. Safeway testified that the alternatives of rooftop and underground parking facilities are not economically feasible since the engineering required would reduce the proposed sales space by one-half while doubling the cost of construction of the store.

16. Safeway testified that compliance with the rear yard requirements of the Zoning Regulations would create a practical difficulty for the lessee since it would necessitate relocation of an existing elevator within the store which alone would increase the overall cost of construction by one-third.

17. The record reflects that Safeway has instituted a Division policy of encouraging its employees to use public transportation to and from work and will distribute Metro information to employees at the expanded Corcoran Street store. Safeway will also provide the Department of Transportation with a survey of Safeway customer transportation patterns at the expanded Corcoran Street store one year after it opens to assist the Department of Transportation in its studies of parking needs in the District of Columbia.

18. The Department of Transportation testified at the public hearing of September 4, 1979 that in its opinion the subject Safeway was a neighborhood store and that even with the proposed expansion it would still be considered a small store. The DOT testified that from the size and location of the store it would not be considered as an attempt to become a regional store that would be serving more than the surrounding neighborhood. This was one of the criteria that DOT has relied on in doing its analysis. The DOT further testified that the subject neighborhood is dense and people are relatively close to the store. There

is much walk-in trade but it is not completely a walk-in-trade. The parking in the area is meter parking on 17th Street, one side only. The parking on Corcoran Street is, with one small exception, residential permit parking. The parking at Safeway now numbers twenty-two spaces. According to the DOT, the critical thing is that the applicant not use more parking that is absolutely necessary for employee parking. The applicant should enforce its asserted policy that all employees are to car pool or ride transit. There could also be better regulated parking by putting more meters on 17th Street and on Corcoran Street. There should be retained a loading space out in front of the store on 17th Street for patrons to pickup their packages and for patrons to unload. The DOT further testified that the entire parking and unloading situation should be monitored and studied by the lessee to determine if the traffic situation is working as it is proposed to work. The Board concurs.

19. By memorandum dated September 14, 1979 the DOT reported that it had reviewed Drawing P-3, Proposed Site/Floor Plan for the proposed Safeway store expansion at 17th and Corcoran Streets, N.W., dated Rev. August 31, 1979, with respect to the proposed loading facility. The plan shows a twelve foot by twenty foot loading berth and a ten foot by fourteen foot loading platform as required by the Zoning Regulations. Because of the extensive use of tractor-trailers at Safeway Stores, the DOT recommended that these vehicles be accommodated in the design. In response, and as reflected by the plan, Safeway has proposed a design which will physically accommodate a fifty-five foot vehicle without reducing the effective width of the sidewalk more than is already reduced by the existing retaining wall located on the north side of the alley. The DOT referred to two irregularities in the plan. First, the width of the west end of the loading area is constricted to approximately ten feet which may create some difficulty in a vehicle maneuvering into position at the actual loading platform. Second, the area labeled as a ten foot by fourteen foot loading platform will, in reality, serve a berth rather than a platform function, and should be so indicated. The area labeled "vestibule," which would serve as the actual loading platform should be so delineated. DOT's position is that the physical space allocated to tractor-trailers is marginally satisfactory, and that encroachment upon sidewalk area by the largest vehicle permitted in the District will not decrease the effective width of the sidewalk. The Board so finds.

20. There was opposition at the public hearing to the application on behalf of neighboring property owners, one of whom was an abutting property owner on Corcoran Street, N.W. The opposition argued as follows:

- a. Safeway had violated several conditions of BZA Order No. 8176, dated July 14, 1965, which permitted accessory automobile parking elsewhere than on the same lots upon which the proposed Safeway store was to be located in that Safeway trucks have been unloading as late as 2:00 a.m. and as early as 6:00 a.m. and that trash pick-ups have been made during the restricted hours of 11:00 p.m. and 7:00 a.m.; that the store windows have not been draped and that advertising has been placed on its windows. The opposition argued that if Safeway violated the very conditions it promised the residents and the BZA in the 1965 application there was no guarantee they would honor any conditions the Board might impose in the subject application.
- b. Safeway trucks block the access to the public alley off 17th Street and prevent residents from using the alley. The blockages lasts for hours and Safeway could not control the time of deliveries. With the proposed additional space more deliveries will be required and cause more congestion and blockage in the alley. Large trailers are not the answer since they will take time to unload.
- c. Safeway's surveys were insufficient to establish that less than ten percent of its customers drive to the subject store. Insufficient numbers were questioned. The survey did not establish that the subject parking lot is no longer needed to satisfy the needs of employees and/or customers. The need for motor vehicles increases as the number and gross weight of purchased groceries increases, particularly when there is a significant distance the customers must walk in order to reach their residence.
- d. There is a critical shortage of parking in the neighborhood and that illegally parked automobiles and delivery trucks exacerbate this problem.
- e. Access to the rear of residential premises is often blocked because of Safeway's delivery trucks.

- f. Increasing the size of Safeway and providing a larger selection and amount of merchandise will have certain obvious ramifications such as an increase in the number of deliveries of goods, an increase in the number of customers and an increase in the number of employees. As a direct consequence, it is predictable that there will be an increase in the traffic congestion in the neighborhood, an increase in the need for parking facilities and an increase in the frequency of disturbances to the residents of the neighborhood.
- g. Providing loading zones on Safeway's 17th Street side will not alleviate the problem of congestion, but will likely exacerbate the existing problems. Independent delivery trucks would be encouraged to use the main entrance for delivering goods and a loading zone would attract more shoppers using motor vehicles. Those shoppers who are encouraged to use the loading zone will still have to find parking while they are shopping. Elimination of the parking lot will result in more overflow into the neighborhood parking facilities while installation of a loading zone will attract more motor vehicles and increase the confusion and congestion that presently exist around the store.
- h. The proposed addition will block the light and air to the residence of the abutting property owner.

Petitions with approximately forty signatures were submitted to the record in support of the position of the opposition.

21. Advisory Neighborhood Commission 2B made no recommendation on the application.

22. At the public meeting of November 7, 1979 the Board deferred a decision on the application and requested the applicant to submit additional information. The Board specifically requested that Safeway provide to the Board a better understanding of the proposed delivery pattern of trucks to the expanded store. The Board further requested that Safeway address how it proposes to limit the number of trucks present at the store at any one time and how Safeway proposes to insure that the number of trucks present does not exceed the capacity of available on-street and

off-street loading areas. The Board further directed Safeway to serve its reply on all parties giving them the opportunity to respond. All such responses were part of the record at the time the Board determined this application at its public meeting of December 5, 1979.

23. The Board is concerned about the issues raised by the opposition, their severity and their repeated occurrences. The Board is of the opinion that if certain safeguards are promulgated, monitored and enforced, as set forth in Findings No. 18 and 19 by the DOT, much of the substantial detriment to the public good as the cluttering of an alley, double parking, illegal parking, deliveries at improper time and trash collection at late hours could be avoided. The Board is also aware that the lessee must feel an obligation to enforce certain rules with its employees as to car pooling and use of the Metro facilities. Although Safeway is a neighborhood store and services a great need in the subject community it does not follow that it can abuse its need by the community. The Board is also aware that if the residents wish the continued service of Safeway that they too have obligations to the neighborhood. They too must obey the traffic restrictions and plan their shopping accordingly. The subject neighborhood is a very dense neighborhood. Parking facilities are scarce. The Board is aware that since there won't be more parking available a better regulated parking must come into being. The Board is optimistic but will condition below its optimism with conditions that should alleviate the existing abuses of Safeway and set a time period in order to evaluate the effectiveness of its grant of the application.

CONCLUSIONS OF LAW

Based on the record the Board concludes that the lessee is seeking area variances the granting of which requires a showing of a practical difficulty stemming from the property itself. The Board notes that the subject lot is at the intersection of two streets, to the north of the property is a public alley and to the south are new houses. One half of the subject lot is improved with the existing Safeway. The second half of the lot is a parking lot and it is this part of the lot on which the proposed addition is to be constructed. There is no room on the site to provide off-street parking. There is also no manner in which the lessee can provide fifteen feet of a rear yard because of the configuration of the existing building. The Board concludes that the practical difficulty is inherent in the property itself.


Paragraph 8207.11 of the Zoning Regulations provides that in addition to satisfying the requirements of a practical difficulty for area variance the variances can be granted if they will not cause substantial detriment to the public good and without substantially impairing the extent, purpose and integrity of the zone plan. In this regard the Board has in Finding No. 23 addressed the concern of the opposition and finds them valid. The Board however concludes that most of the issues raised can be ameliorated, corrected or minimized with the conditions hereinafter imposed by the Board to the grant of the application. Accordingly, the Board approves the release of the owner of the subject property from the covenant with the Government of the District of Columbia that the subject parking area be reserved. The application is hereby GRANTED SUBJECT to the following CONDITIONS:

- a. Safeway shall schedule truck deliveries to the store in a manner such that the number of trucks present does not exceed the capacity of available loading areas. To that end, Safeway shall allow no more than one Safeway truck at a time to be present at the store. Further, Safeway shall assign to each direct delivery vendor a delivery time consisting of a two hour interval on particular days. A vendor shall be permitted to deliver at any time during that interval, but the delivery interval will be staggered throughout the day.
- b. Approval shall be for a period of eighteen months following the issuance of a Certificate of Occupancy to operate the expanded store. The applicant shall reapply to the Board prior to the expiration of this approval so that the Board may re-evaluate the effectiveness of the truck loading procedures.

VOTE: 3-1 (Charles R. Norris, John G. Parsons and Leonard L. McCants to grant, William F. McIntosh opposed, Connie Fortune not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

BZA APPLICATION NO. 13008
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FINAL DATE OF ORDER: 17 MAR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13008, of Sylvia Kotz, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the off-street parking requirements (Sub-section 7202.1) and from the rear yard requirements (Sub-section 5305.1) for a proposed addition to a grocery store in a C-2-B District at the premises 1701 Corcoran Street, N.W., (Square 155, Lot 231).

STATUS: The Board GRANTED the application by a Vote of 3-1 (Charles R. Norris, John G. Parsons, and Leonard L. McCants to GRANT; William F. McIntosh OPPOSED; Connie Fortune not voting, not having heard the case).

FINAL DATE OF ORDER: March 17, 1980

FINDINGS OF FACT:

1. By letter of April 25, 1980, the applicant requested the Board to approve modifications to the plans reviewed by the Board at its public hearing of September 4, 1979.

2. Subsequent to the issuance of the Final Order, the applicant's lessee Safeway, prepared working drawings for construction. The Zoning Administrator's Office in reviewing the final plans submitted with an application for a construction permit determined that the plans for the mechanical penthouse had been modified in two respects from the plans reviewed by the BZA. The changes were made to solve practical problems that became apparent during the preparation of the working drawings for the construction of the proposed addition to the store.

3. The modifications consist of the following:

- a. The mechanical penthouse has been set back fifteen feet from the north wall of the proposed addition.
- b. Doors have been substituted for a louver on the north wall of the mechanical penthouse.

4. The proposed plan placed the mechanical penthouse in the northwest corner of the roof of the expanded store. On the ground level this is the location of the existing loading dock. Construction is planned to be phased so that the store can remain open throughout the construction period. This requires uninterrupted deliveries to the store and, as a result, the existing loading dock must remain in operation until the new loading dock on 17th Street can be completed. One of the early phases of construction would also include the construction of the new mechanical penthouse since it houses the equipment for refrigeration system and utilities. During the planning for the construction of the penthouse, it became apparent that in order to provide the support necessary for the construction of the penthouse columns would have to be placed directly below it in the existing loading dock area. This would prevent the delivery trucks from using the loading dock. To avoid this practical operational problem, the mechanical penthouse was set back fifteen feet from the north wall. This permits the construction of the mechanical penthouse and the use of the existing loading dock during the construction of the new loading dock.

5. Doors were substituted for the louvers shown on the north wall of the mechanical penthouse. This was changed to improve the access to the mechanical penthouse for the initial installation of the mechanical equipment and later maintenance and repair.

6. The subject modifications comply fully with the Zoning Regulations.

7. The applicant now requests approval of the modified plans marked as Exhibit No.71 of the record.

8. The request for modification of plans was served upon the parties in opposition who participated in the case. No responses were received from any of the parties.

CONCLUSIONS OF LAW AND OPINION:

Upon consideration of the applicant's request, the Board finds that approval of the revised plans does not change the relief granted by the Board. There are no additional variances required and all of the material facts which the Board relied upon in granting the application are still relevant.

It is therefore ORDERED that the applicant's request for modification of plans is GRANTED, that the revised set of plans marked as Exhibit No. 71 of the record are hereby APPROVED and that such plans shall be substituted for those originally submitted to and approved by the Board. In all other respects, the Order of the Board dated March 17, 1980, shall remain in full force and effect.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh and Leonard L. McCants to GRANT; Connie Fortune and Walter 3. Lewis not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 2 JUN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."